

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

FACILITY LEAD

CORRECTIVE MEASURES IMPLEMENTATION AGREEMENT

Facility: PECO Energy Company
Chester, Pennsylvania

ID Number: PAD000731026

Address: Front and Jeffrey Streets
Chester, Pennsylvania

I. INTRODUCTION

This Corrective Measures Implementation Agreement (Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA) and the Exelon Generation Company, LLC (Exelon) (previously the PECO Energy Company) and addresses a 17-acre parcel owned by Preferred Real Estate Investments and located on Front and Jeffrey Streets in Chester, Pennsylvania (the Facility).

II. STATEMENT OF PURPOSE

The Resource Conservation and Recovery Act (RCRA) Corrective Action Program's overall objective is to protect human health and the environment. To achieve this objective, EPA selects final remedies at corrective action facilities based on, among other things, potential future land and groundwater uses and ecological receptors. In entering into this Agreement, the mutual objective of EPA and Exelon is to implement the final remedy selected by EPA in the Final Decision and Response to Comments for the Facility (Final Remedy). The Final Remedy is attached to this Agreement as Exhibit 1.

III. WORK TO BE PERFORMED

Exelon agrees to perform the Final Remedy including the following activities:

A. Conduct Survey

1. Within sixty (60) days after the effective date of this Agreement, Exelon shall survey the Facility for visible fragments of resinous material. If Exelon discovers any visible fragments of resinous material on the surface at the Facility during the survey or at anytime there after, Exelon shall notify EPA orally

within forty-eight (48) hours of the discovery and notify EPA in writing within five (5) calendar days of the discovery. Within thirty (30) days of written notice to EPA, Exelon shall complete the removal of such fragments and dispose of them off-site in accordance with federal, state and local laws. If Exelon finds that it is impracticable to remove such visible fragments within thirty (30) days of written notice to EPA, Exelon must notify EPA in writing of the date upon which the removal will be complete.

B. Stabilize and Maintain Riprap

1. Within sixty (60) days after the effective date of this Agreement, Exelon shall complete the stabilization of the portion of the Delaware River bank adjacent to the Facility with sufficient riprap (large rocks placed against the bank) to prevent soil erosion.

2. Upon completion of stabilizing the portion of the Delaware River bank adjacent to the Facility with riprap, Exelon shall thereafter maintain the riprap to prevent soil erosion.

C. Maintain Shoreline Remediation System

1. On and after the effective date of this Agreement, Exelon shall operate, maintain, and extend as necessary, the shoreline remediation system as described in the Final Remedy, Section III (Environmental Conditions and Remedy Components), Paragraph C, which it installed to remove contamination floating on the surface of the groundwater and to prevent oil sheens from forming on the Delaware River. If after (two) 2 years from the effective date of this Agreement, there have been no visible sheens or observable contamination floating on the surface of the groundwater, Exelon may propose to EPA for approval a plan to terminate the shoreline remediation system.

D. Monitoring

1. Exelon shall continue to sample the eleven existing groundwater wells (MW1 through 5, MW9, and MW11 through 15) quarterly for 2 years to confirm that dissolved-phase contamination levels in the groundwater do not exceed the levels set forth in Pennsylvania's Water Quality Criteria, 25 Pa. Code § 93.6, and are not a threat to human health and/or the environment.

2. Exelon shall provide EPA with two copies of quarterly (every three months) Progress Reports sixty (60) calendar days after the quarterly sampling referred to in paragraph D.1, above. The Progress Report shall contain the data collected during the sampling event and an analysis of such data. The Progress Report shall also contain the information required to be submitted in the

Bimonthly Report required under paragraph 24, Section VI.G of the 1993 Administrative Order on Consent, Docket No. RCRA-3-064CA. Exelon shall submit the Progress Reports to EPA in lieu of the Bimonthly Report. At the end of the initial 2-year monitoring period referenced in paragraph D.1, above, Exelon shall continue to provide EPA with quarterly Progress Reports in lieu of the Bimonthly Reports required under the 1993 Administrative Order on Consent.

3. If, at any time during a quarterly sampling referred to in paragraph D.1, above, Exelon determines that any of the wells contain observable amounts of light non-aqueous phase liquid (LNAPL), Exelon shall remove such constituents from the affected well(s), treat, store or dispose of such constituents in accordance with federal, state and local requirements, and sample the affected well(s) during the next quarterly sampling event.

E. Notice

1. Exelon shall provide a copy of this Agreement to any successors in interest, assigns, lessees and sublessees to the Property and to each contractor hired to perform any requirement of this Agreement, and shall do so within seven (7) calendar days of the effective date of this Agreement or date of such retention, whichever is later. Exelon shall also condition all contracts entered into for performance of the requirements of this Agreement in conformity with the terms of this Agreement. Exelon or its contractors shall provide written notice of the Agreement to all subcontractors hired to perform any requirement of this Agreement. Exelon shall nonetheless be responsible for performing all the requirements herein in accordance with the terms and conditions set forth in this Agreement.

2. If at any time following the effective date of this Agreement, Exelon proposes or any of its successors in interest, assigns, lessees and/or sublessees propose to conduct any activity on the Facility which might interfere with or adversely affect the effectiveness or permanence of the Final Remedy, Exelon shall submit for EPA approval prior to the commencement of any such activities, a description of such activities in sufficient detail to permit EPA to assess the potential impact of those activities on the Final Remedy.

3. Within ninety (90) days following the effective date of this Agreement, Exelon shall submit to EPA for review and approval a notice to be filed with the Recorder of Deeds for Delaware County, Pennsylvania, which shall provide notice to all successors-in-title that in 1993, Exelon entered into an Administrative Order on Consent under RCRA Section 3008(h) (Docket No. RCRA-3-064CA); that on March 22, 2001, EPA selected the Final Remedy for the Facility; and that Exelon has entered into this Agreement requiring it to implement EPA's Final Remedy. The notice shall also recite Exelon's specific obligations to restrict use

of the Facility pursuant to this Agreement. Exelon shall not modify or remove such notice(s) without prior written approval of EPA. Exelon shall cause the recording of such notice(s) within ten (10) days of EPA's approval of such notice(s). Exelon shall provide EPA with a time-stamped copy of the recorded notice(s) within thirty (30) days of recording such notice(s).

4. If, at any time, Exelon identifies conditions at the Facility that warrant corrective action to maintain the integrity of the Final Remedy, Exelon shall notify EPA orally within forty-eight (48) hours of discovery and notify EPA in writing within five (5) calendar days of the discovery and submit a proposal to EPA for approval within fourteen (14) calendar days of said discovery to address the issue. Upon receipt of EPA approval, Exelon shall implement the EPA-approved proposal in accordance with the terms and schedules contained therein.

5. If, at any time, EPA identifies conditions at the Facility that warrant corrective action to maintain the integrity of the Final Remedy, EPA will notify Exelon and Preferred Real Estate Investments in writing. Within fourteen (14) days of receiving EPA's written notification, Exelon shall submit to EPA for approval a proposal to address the issue. Upon receipt of EPA approval, Exelon shall implement the EPA-approved proposal in accordance with the terms and schedules contained therein.

F. Measures to protect surface water quality

1. At the end of the initial 2-year monitoring period referenced in paragraph D.1 of Section III (Work to be Performed), if EPA determines that the levels of contamination in the groundwater at the Facility are in equilibrium or decreasing, EPA will develop Alternate Concentration Limits (ACLs) for the dissolved contaminants in the groundwater with which Exelon shall comply. These ACLs will constitute permanent standards for the dissolved contaminants which may leave the Facility and enter the Delaware River. These standards will be calculated to protect the surface water quality of the Delaware River.

2. At the end of the initial 2-year monitoring period referenced in paragraph D.1 of Section III (Work to be Performed), if EPA determines that the levels of contamination in the groundwater at the Facility are not in equilibrium or are not decreasing, EPA shall provide Exelon notice of its determination. Within sixty (60) calendar days of receiving EPA's notice, Exelon shall submit to EPA for approval a proposal for a long-term groundwater monitoring program, including, if necessary, the installation of a groundwater treatment system to reduce the levels of contamination in the groundwater. Upon receipt of EPA approval, Exelon shall implement the EPA-approved proposal in accordance with the terms and schedules contained therein.

3. If, at any time, Exelon determines that the levels of contamination in the groundwater at the Facility increase above the levels set forth in Pennsylvania's Water Quality Criteria, 25 Pa. Code § 93.6, Exelon shall notify EPA orally within forty-eight (48) hours of discovery and notify EPA in writing within five (5) calendar days. Within fourteen (14) calendar days of its written notice to EPA, Exelon shall submit to EPA for approval a proposal to develop and implement additional measures to protect surface water quality. Upon receipt of EPA approval, Exelon shall implement the EPA-approved proposal in accordance with the terms and schedules contained therein.

4. If, at any time, EPA determines that the levels of contamination in the groundwater at the Facility increase above the standards set forth in Pennsylvania's Water Quality Criteria, 25 Pa. Code § 93.6, EPA will notify Exelon in writing. Within fourteen (14) days of receiving EPA's written notification, Exelon shall submit to EPA for approval a proposal to develop and implement additional measures to achieve the standards set forth in Pennsylvania's Water Quality Criteria, 25 Pa. Code § 93.6. Upon receipt of EPA approval, Exelon shall implement the EPA-approved proposal in accordance with the terms and schedules contained therein.

IV. RESERVATION OF RIGHTS

- A. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to the Facility's activities. This Agreement shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which EPA has under RCRA, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sections 9601-9675 (CERCLA), or any other statutory, regulatory, or common law authority of the United States.
- B. EPA reserves the right to disapprove work performed by Exelon pursuant to this Agreement and to request or direct that Exelon perform additional tasks.
- C. EPA reserves the right to require or to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and remedial work as it deems necessary to protect human health and/or the environment. EPA may exercise its authority under CERCLA to undertake response actions at any time. EPA reserves its right to seek reimbursement from Exelon for costs incurred by the United States. Notwithstanding compliance with the terms of this Agreement, Exelon is not released from liability, if any, for the costs of any response actions taken or authorized by EPA.

- D. If EPA determines that activities undertaken pursuant to this Agreement have caused or may cause a release or a threat of release of solid waste, hazardous waste, hazardous constituent(s), or a threat to human health and/or the environment, Exelon either has failed or refuses to comply with this Agreement or that Exelon is not capable of undertaking the work agreed upon, EPA may order Exelon to stop further implementation of activities undertaken pursuant to this Agreement for such period of time as EPA determines may be needed to abate any such release or threat and/or to undertake any action which EPA determines is necessary to abate such release or threat.
- E. EPA and Exelon acknowledge and agree that EPA's approval of any Statements of Work (SOWs) or any workplan submitted pursuant to this Agreement does not constitute a warranty or representation that the SOWs or workplans will achieve the required cleanup or performance standards. Compliance by Exelon with the terms of this Agreement shall not relieve it of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.
- F. Notwithstanding any other provision herein, no action or decision by EPA pursuant to this Agreement, including without limitation, decisions of the Regional Administrator, the Director of the Waste and Chemicals Management Division, or any authorized representative of EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of an enforcement action, including an action for penalties or an action to compel the Facility's compliance with RCRA.
- G. Notwithstanding any terms or conditions in this Agreement, EPA may, at any time, take additional enforcement action pursuant to RCRA, including but not limited to Sections 3008(h) of RCRA, 42 U.S.C. § 6928, or any other authority, should EPA determine that such action is warranted.
- H. Indemnification: Exelon agrees to indemnify and save and hold harmless the United States government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account of acts or omissions of Exelon or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Agreement. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Exelon or the United States under their various contracts. Exelon shall not be responsible for indemnifying the EPA for claims or causes of action solely from or on account of acts or omissions of EPA.

V. CERTIFICATION

Any report submitted to EPA by Exelon shall be certified by a "responsible corporate officer," as

defined in 40 C.F.R. § 270.11(a)(1). Exelon agrees to provide the certification in the following form:

I certify that the information contained in this Report is true, accurate, and complete.

As to [the/those identified portion(s)] of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this report and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

Signature :

Name : _____

Title :

VI. SAMPLING AND DATA/DOCUMENT AVAILABILITY/ACCESS

- A. Exelon shall submit to EPA the results of all sampling and/or tests or other data generated by, or on behalf of, the Facility in accordance with the requirements of this Agreement.
- B. At the request of EPA, Exelon shall provide or allow EPA or its authorized representatives to take split or duplicate samples of all samples collected by Exelon pursuant to this Agreement. Nothing in this Agreement shall limit or otherwise affect EPA's authority to collect samples pursuant to applicable law, including, but not limited to, RCRA and CERCLA
- C. Exelon may assert a business confidentiality claim covering all or part of any information submitted to EPA pursuant to this Agreement in the manner described in 40 C.F.R. Section 2.203(b). Exelon shall not assert any confidentiality claim with regard to any physical, sampling, monitoring, or analytical data.
- D. Commencing on the effective date of this Agreement, Exelon agrees that it shall preserve for at least three (3) years and make available to EPA for inspection and copying, all data, records and documents in its possession or in the possession of its divisions, officers, directors, employees, agents, contractors, successors, and

assigns which relate in any way to this Agreement or to the hazardous waste management and/or disposal at the Facility.

- E. Commencing on the effective date of this Agreement, Exelon agrees to provide EPA and/or its authorized representatives access to the Facility for the purposes of reviewing Exelon's progress in carrying out the terms of this Agreement and verifying the reports and data submitted to EPA by Exelon.
- F. Nothing in this Agreement limits or otherwise affects EPA's rights of access and entry pursuant to applicable law, including, but not limited to, RCRA and CERCLA.

VII. OTHER APPLICABLE LAWS

All actions shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Exelon shall obtain or require its authorized representatives to obtain all permits and approvals necessary under such laws and regulations.

VIII. NOTICE OF NON-LIABILITY OF EPA

EPA shall not be deemed a party to any contract involving the Facility and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act, or the omission of the Facility, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Agreement.

IX. EFFECTIVE DATE

The effective date of this Agreement shall be the date upon which EPA issues written notice to Exelon that the Agreement has been fully executed.

X. SIGNATURES

DATE: _____

BY:

JAMES BURKE
DIRECTOR
WASTE & CHEMICALS MANAGEMENT DIVISION
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION III

DATE: _____

BY:

FOR EXELON